

THE HON'BLE SRI JUSTICE V.V.S.RAO

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WRIT PETITION No.16923 of 2007

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Dated:21.08.2007

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Between:

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M/s.Arvind Engineering Co.
Represented by its Managing Partner,
Mr.A.K.Goel, S/o.Surender Kumar Goel,
29 & 30, First Floor, Unity House, Abid Road,
Hyderabad.

...Petitioner

and

The District Collector & Chairman,
District Water Management Agency,
Karimnagar,
and others.

...Respondents

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ORDER:

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The petitioner is a Firm engaged in the business of supplying engineering equipment. The first respondent issued short tender notice dated 15.03.2007 inviting the tenders for supply of 60 numbers of Automatic Level Instruments, 60 numbers of Telescopic Levelling Staves. The petitioner submitted tender quoting a sum of Rs.17,425/- and Rs.2,290/- each for two types of instruments. The third respondent as well as M/s.Bhargava Engineering Company also submitted tenders. The petitioner alleges that it quoted lowest tender, and in spite of the same, the first respondent awarded the contract to the third respondent. The petitioner was not given any information about the award of the contract. Therefore, it filed the instant Writ Petition challenging the purchase order vide proceedings dated 07.06.2007 of the first respondent directing the third respondent to supply the equipment.

The only submission made by the petitioner at the time of admission is that ignoring the lowest tender of the petitioner and awarding the contract to the third respondent is illegal and arbitrary. **Opposing** the Writ Petition, the learned Assistant Government Pleader for Revenue (General-T) submits that the contract was awarded to the third respondent on 07.06.2007, and after entering into agreement, the third respondent also completed the supply of material, and therefore, nothing survives in the Writ Petition.

A perusal of paragraph No.5 of the affidavit accompanying the Writ Petition would show that the contract awarded to the third respondent was already performed duly supplying the engineering equipment as noticed hereinabove. In such a case, it would be improper for this Court to adjudicate the validity of the action. If the petitioner is aggrieved by the alleged arbitrary award of contract to the third respondent, its remedy is to file a suit in the civil Court.

It is now well settled that the question of arbitrariness in awarding of contract can be raised only at the pre-award stage of contract. At the moment the contract is awarded, such argument is not available to an aggrieved person. He has to seek appropriate remedy in Civil Court.

In **Radhakrishna Agarwal v State of Bihar**^[1] the Supreme Court held that power to enter into contract is not always regulated by the Constitution. The relationship of persons to the contract is regulated by the contract. The State as well as other persons to the contract is bound by the obligations in the contract. Though the relationship between the persons to the contract is not the relationship of master and servant, after entering into contract, the relations are no longer governed by the constitutional provisions, but by the legally valid contract. The remedy under Article 226 of the Constitution of India is not a proper remedy for redressing the grievance of the parties to the contract. The following observations of the Apex Court in **Radhakrishna Agarwal** (supra), further lay down as under.

... .. Even if the appellants could be said to have raised any aspect of Article 14 of the Constitution and this Article could at all be held to operate within the contractual field whenever the State enters into such contracts, which we gravely doubt, such questions of fact do not appear to have been urged before the High Court. And in any event, they are of such a nature that they cannot be satisfactorily decided without a detailed abduction of evidence, which is only possible in ordinary civil suits, to establish that the State,

acting in its executive capacity through its officers, has discriminated between parties identically situated. On the allegations and affidavit evidence before us we cannot reach such a conclusion. Moreover, as we have already indicated earlier, the correct view is that it is the contract and not the executive power, regulated by the Constitution, which governs the relations of the parties on facts apparent in the cases before us.

The Writ Petition, with the above observations, is accordingly dismissed. No costs.

(V.V.S.RAO, J)

21.08.2007

vs

[\[1\]](#) AIR 1977 SC 1496